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No. 84-2023

IN THE

Supreme Court of the United States

October Term, 1984

INDEPENDENT BANKERS ASSOCIATION OF NEW YORK STATE, INC., THE CANANDAIGUA NATIONAL BANK AND TRUST COMPANY,
Petitioners,

vs.

MARINE MIDLAND BANK, N.A.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR CERTIORARI

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Introduction

Pursuant to Supreme Court Rule 22.6, petitioners Independent Bankers Association of New York State, Inc. ("IBANYS") and The Canandaigua National Bank

and Trust Company ("CNB") submit this supplemental brief in support of their petition for a writ of certiorari, and in reply to respondent Marine Midland Bank, N.A.'s ("Marine") supplemental brief dated October 21, 1985.

Counterstatement of Intervening Matter

On July 11, 1985, the New York State Banking Department adopted revised regulations governing the deployment of automated teller machines ("ATMs").[1] In its supplemental brief, Marine argues that under the regulations, New York-chartered banks may use shared ATMs in home office protected communities for some banking transactions. (Marine's Supp. Br. at 2). Marine's interpretation results from a misreading of the regulations, and is directly at odds with the statutes which the regulations purport to implement.

Section 105-a of the New York Banking Law expressly states that ATM facilities are to be considered branches for purposes of home office protection and "shall be subject to the terms and conditions" of the home office protection statute, New York Banking Law §105. In accordance with this statutory mandate, the regulations reiterate that any shared use of ATMs by New York-chartered banks is "subject to the limitations contained in sections . . . 105(1)(ii) . . . of the Banking

[1] The text of the regulations, and the New York Superintendent of Bank's explanation letter accompanying the regulations, are set forth as Appendix A and B to Marine's supplemental brief (hereafter, "Marine's Supp. Br. at ___ ___").

Law . . . as if [the ATMs] were branches." N.Y. Admin. Code tit. 3, §73.1 (1985). (Supp. App. at 1a). In her explanation letter, the Superintendent acknowledged that the regulations had "been conformed to new statutory language that no longer deems electronic facilities branches, *except for the purposes of* CRA and *home office protection.*" (Marine's Supp. Br. at 1a) (emphasis added).

Properly interpreted, the regulations therefore reaffirm New York's continuing legislative and regulatory commitment to home office protection. Although shared ATM use by state-chartered banks is widely permissible in many New York communities, in Canandaigua, only CNB—the home office protected bank—may "branch" by using an ATM facility. (*See* Petition for Certiorari at 13-14; 1a-2a).[2]

Because New York-chartered banks are prohibited from utilizing an ATM in Canandaigua for any purpose, Marine must be similarly prohibited, in order to preserve

[2] Section 73.5 of the regulations, upon which Marine relies, does permit state-chartered banks to utilize shared ATMs for some limited transactions without notice to the Superintendent. However this authorization is limited by New York Banking Law §§ 105 and 105-a, and the "General Statement" of policy contained in § 73.1 of the regulations, which reaffirm that any ATM use is subject to home office protection.

the competitive equality between state and federally-chartered banks which Congress mandated in 12 U.S.C. §36(c).[3]

Respectfully submitted,

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[3] State-chartered banks are presently at a competitive disadvantage in New York's home office protected communities by reason of the Second Circuit's erroneous decision in this case. The Superintendent has recognized that "[n]ational banks may share electronic facilities for any purpose, including deposit-taking, without making application to the Comptroller of the Currency, thus enabling them to share electronic facilities in home office protected communities." (Marine's Supp. App. at 1a).